

	)	
UNITED STATES OF AMERICA and	)	
THE STATE OF WISCONSIN,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 10-C-910
v.	)	
	)	The Honorable William C. Griesbach
NCR CORPORATION, <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

When Defendant NewPage Wisconsin Systems, Inc. (“NewPage”) contacted Plaintiff United States of America in late November to request additional time to answer or otherwise respond to the Complaint on the basis of “ongoing settlement negotiations,” the United States informed NewPage that it was unwilling to grant such an extension, as Plaintiffs’ efforts to reach a negotiated settlement with NewPage had proven unproductive. Nothing has happened since that time to warrant an *ex post facto* extension of NewPage’s December 20, 2010 response time until February 18, 2011 (60 days) due to settlement negotiations and the United States continues to oppose such a request. The United States, however, had been unaware of NewPage counsel’s illness and does not object to providing NewPage with additional time until January 19, 2011 (30 days) on that basis.

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2. Plaintiffs could have served NewPage and the other defendants with the Complaint on that date, which would have required a response within 21 days (November 8, 2010). Instead, Plaintiffs selected to utilize the waiver of service provisions of Rule 4(d) of the Federal Rules of Civil Procedure which provides 60 days for a response. Consistent with these procedures, NewPage's response was initially due on December 13, 2010. *See* Dkt. 23-8.

3. In late November, counsel for NewPage left a voice-mail message for the undersigned attorney requesting a 60-day extension on the grounds of ongoing settlement negotiations between Plaintiffs and NewPage. Counsel for the United States responded by voice-mail that the status of such "negotiations" did not warrant an extension of time and declined NewPage's request for additional time.

4. On December 1, 2010, Plaintiffs filed a First Amended Complaint (Dkt. 30). Although the amendments did not impact the claims asserted against NewPage, operation of Rule 15(a)(3) extended NewPage's response date until December 20, 2010.

5. On December 2, 2010, counsel for NewPage requested a copy of the Amended Complaint in word processing format, to facilitate his drafting of an answer. Counsel for the United States e-mailed the Amended Complaint in Wordperfect format to NewPage counsel later that same day.

6. Plaintiffs were first made aware of NewPage counsel's illness only upon receipt of NewPage's Motion for Additional Time (Dkt. 71).

The United States does not believe that an extension of NewPage's response date until February 18, 2011 will in any meaningful way facilitate resolution of its claims against NewPage and requests that the Court deny NewPage's request for such additional time. Due to NewPage

counsel's prior illness, however, the United States would not object were the Court to provide  
NewPage until January 19, 2011 to answer or otherwise respond.

Respectfully submitted,

For the United States of America

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Dated: January 3, 2011

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this date copies of the foregoing Plaintiffs' Response to Defendant NewPage's Motion for Additional Time were served by the Court's Electronic Case Filing System upon the following individuals:

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Additionally, copies of the foregoing United States' Response to Defendant NewPage's Motion for Additional Time were served by first-class mail upon the following individuals:

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